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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 888,982	06 25 2001	Jerome Laffont	88265-6487	9566

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PATENT DEPARTMENT
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WASHINGTON, DC 20005-3502

EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07 08 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09 888,982

Examiner

N Bhat

Applicant(s)

LAFFONT ET AL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

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DETAILED ACTION

1. Claims 9 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 9, it is not clear what is meant by "broth" with respect to a frozen confectionery product. Broth is usually construed to mean an aqueous solution or stock comprising vegetables or poultry or meat or mixtures thereof, which is steeped in water. It is unclear how this would be used in a frozen confectionery or frozen dessert. Suitable explanation is required. In claim 14 and 15 "the core" lacks positive antecedent basis.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. in combination with Pfister et al.

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Clark et al. teach providing a multicomponent ice confectionery product which is either spherical or cylindrical in shape which comprises an ice confection dessert like ice with hot chocolate sauce or hot raspberry sauce which can be microwaved wherein the inner center is heated by the microwave energy while the outer frozen confection is still frozen. Specifically the central component of the confectionery product is a sauce such as chocolate, fruit or mint and a layer surrounding the center is an ice confectionery material which is coated not with a couverture and/or particles such as chopped nuts, wafer crunches etc. Specifically, from Figure 1 a spherical ice confectionery product as depicted in a concentric arrangement includes a center (1) of chocolate sauce enclosed in a shell (2) of standard vanilla ice cream and a coating (3) of couverture which is a cocoa fat based product when the confectionery product is exposed to a commercial microwave oven on half power results in providing a confectionery sphere where in the outer shell is frozen but has a molten warm center. Also taught by Clark is to provide a multicomponent ice confection comprising in hemispherical arrangement an inner area of sauce and an outer area of an ice confectionery forming a hemispherical composite product which is attached to a disk shaped sponge cake or biscuit base[Note Figure 2], wherein the dimensions of the areas and the electrical properties of the components are such that on exposure of the confection to microwave energy the inner area of sauce will be heated to a temperature of at least 25°C while the outer area of ice confection remains frozen. Frozen dessert which further includes the biscuit or cake layer can be coated with a couverture.

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However, Clark et al. does not teach the specific packaging used to package the multicomponent ice confection nor applicant's specific orientation of the ice cream core, semi-fluid composition having an insulating characteristics with respect to the microwaves partially or completely surround the core.

Clark et al. as shown in Figure 2, depicts a frozen multicomponent ice confection product. The core is a chocolate, element 4 is a genoese or biscuit, and surround the chocolate core is a core of ice cream there is an outer layer which is a couverture coating. Although, the orientation is not exactly as applicant depicts in Figure 2, the multicomponent ice confection is basically taught and to change the orientation of the layers would have been an obvious design choice to one having ordinary skill in the art at the time the invention was made because the concept of having the chocolate sauce being microwaveable and the ice cream remaining frozen has been taught further providing a biscuit layer which is an insulating layer is also taught therefore, one of ordinary skill in the art would be in possession of which layers would be microwaveable and heatable and which layers would remain heated or frozen thus permissible to change the orientation of the layers of the frozen ice confection or frozen dessert confection.

With respect to the packaging, Pfister et al. teach an induced thermal inversion packaging for the facilitation the heating of a food product having an interior and exterior which includes an antenna which receives microwave energy and then converts the microwave energy into electric current which is provides resistive heating of the food contained within the package. Specifically, the food, which is package and microwave

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heated, is a frozen dessert confectionery product which comprise an outer layer of ice cream surround an inner core of chocolate which is separated from the ice cream by an edible waffle material. During packaging of the confection the package is placed entirely around the ice cream with the probes in contact with the opposite ends of the chocolate core. While heating, in the microwave oven the package will receive the microwave energy convert it into an electric current and the probes will direct the current into and across the chocolate core. The packaging is designed to shield the ice cream from the microwave energy and the waffle will insulate the ice from the core to main the ice cream in a frozen state. The resulting confection will be frozen on the outside and heated or melted on the inside. The orientation of the frozen confectionery is the same as what has been taught in Clark et al. and for the reasons explained above about the orientation of layers of the multicomponent ice confectionery product, it is maintained that the ice confectionery product which is microwaveable wherein the ice cream remains frozen the chocolate sauce is melted or heated and a biscuit layer acts as an insulator has been taught, the multicomponent ice confectionery product which is packaged for commerce has been taught in Pfister et al. thus rendering applicant's invention as a whole obvious by fairly suggesting a frozen, microwaveable dessert that includes a frozen confectionery, surrounded by a semi-fluid composition having an insulating character with respect to microwaves, a layer of biscuit serving as a support for the ice cream and also an insulator to the microwave energy and a coating which is surrounds the frozen confectionery which has a microwave absorbing character.


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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Speakman et al. teach a frozen edible produce and method which includes a frozen core surrounded by an in contact with a frozen coating wherein the composition can be exposed to microwave energy so that the frozen coating become s heated to a softened sate while the core remains substantially frozen. Schmidt et al. teach a method of preparing a packaged frozen confectionery product. Ito teaches a method making soft ice cream on a commercial scale wherein frozen ice cream in a hard state is wrapped in a pillow-type soft container and then microwaved to provide a soft serve type ice cream product. WO 90/08710 teaches a frozen ice cream cup with invertible lid for hot sundae topping.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


NINA BHAT
PRIMARY EXAMINER
GROUP 1300 1761